

ROBERT G. RACE
CLYDE N. BEGGS

IBLA 78-482

Decided October 10, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against oil and gas lease W-61257.

Affirmed.

1. Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases: Cancellation

Under 30 U.S.C. § 184(h)(2) (1970) and 43 CFR 3102.1-2(a), BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

APPEARANCES: Robert G. Race and Clyde N. Beggs, pro sese; Thomas W. Ehmann, Esq., Milwaukee, Wisconsin, for protestee, Gordon J. Lindsay and Resource Service Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gordon J. Lindsay's simultaneous oil and gas lease offer card was drawn with first priority in the September 1977 drawing for parcel WY 95 in the Wyoming State Office, Bureau of Land Management (BLM). In this drawing, the joint drawing entry card of Robert G. Race and Clyde N. Beggs was drawn with second priority. On November 15, 1977, BLM issued oil and gas lease W-61257 to Lindsay, effective December 1, 1977. On November 23, 1977, a protest to the acceptance of Lindsay's offer was filed by Lloyd W. Gunn, Jr., but this protest was dismissed by BLM on November 25, and Gunn did not press an appeal.

On January 16, 1978, Lindsay, as lessee of oil and gas lease W-61257, assigned the lease to the Diamond Shamrock Corp. BLM approved this assignment on January 30, 1978, effective February 1, 1978. On January 26, 1978, Race and Beggs filed a letter protesting the fact that Lindsay had won the lease and requesting that they be declared the winners. They alleged therein that the offer was improper in that Lindsay had used a common address and was not the sole party in interest in the offer, as the Resource Service Company

actually held an interest therein. On February 1, 1978, BLM wrote a letter, not in the form of a decision, informing them that, inasmuch as an assignment of the lease in question to Diamond Shamrock had already been approved, 43 CFR 3102.1-2(a) applied, and, therefore, that the lease could not be cancelled regardless of any irregularities in Lindsay's offer. ^{1/} No appeal information was included in this letter.

On May 19, 1978, Race and Beggs filed another protest against the issuance of the lease to Lindsay, repeating the same grounds as set out in their first protest. On May 23, 1978, BLM issued a decision officially dismissing this protest for the same reasons as set out in the letter of February 1, 1978. BLM stated there have been bona fide purchasers of the lease. Race and Beggs (appellants) have appealed from this decision, but do not deny that the lease has been assigned to bona fide purchasers.

[1] The regulation in question, 43 CFR 3102.1-2(a), is based on the Act of September 21, 1959, 73 Stat. 571, as amended by the Act of September 2, 1960, 74 Stat. 781, 30 U.S.C. § 184(h)(2) (1970), which provides in part as follows:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, * * * which lease * * * was acquired and is held by a qualified * * * corporation in conformity with those provisions, even though the holdings of the person * * * from which the lease * * * was acquired * * * may be or may have been subject to cancellation or forfeiture for any such violation.

This provision prevents the Department from cancelling a lease where it has been assigned to a bona fide purchaser, even though the original lease offer was clearly defective. Southwest Petroleum Corp. v. Udall, 361 F.2d 650, 655-6 (10th Cir. 1966); Duncan Miller, A-30600 (December 1, 1966). ^{2/} In the absence of any facts that suggest bad

^{1/} On March 3, 1978, BLM approved an assignment of a 25-percent interest in this lease from the Diamond Shamrock Corp. to the Apache Corp.

^{2/} In J. Penrod Toles, 68 I.D. 285, 290, aff'd Southwest Petroleum Corp. v. Udall, supra, it was observed as follows:

"Neither the statute nor the regulation is very clear as to whether it applies to bona fide purchasers of leases issued in violation or disregard of other than the acreage limitation provisions of the Mineral Leasing Act. The legislative history of the act shows an exclusive preoccupation with the problem of leases issued in violation of the acreage limitations and subsequently transferred to bona fide purchasers. However, the statutory language broadly refers to leases issued in violation of any provision of the act, and the

faith on the part of the assignee, this provision applies, and the lease may not be cancelled despite the improprieties in its issuance, and despite the fact that another offeror might have properly had the statutory preference right. Duncan Miller, supra.

In the instant case, BLM properly dismissed appellants' protest. The Diamond Shamrock Corp. had purchased Lindsay's lease, and nothing in the record indicates that it knew of any impropriety in Lindsay's offer. We conclude that it was a bona fide purchaser of the lease. Nor is there anything in the record indicating that Diamond Shamrock Corp. is unqualified under, or is not holding this interest in conformity with, the provisions of the Mineral Leasing Act. Therefore, per 30 U.S.C. § 184(h)(2) (1970) and 43 CFR 3102.1-2(a), as a presently qualified bona fide purchaser has acquired it, BLM properly refused to cancel lease W-61257. This result obtains even though it might have been subject to cancellation prior to the assignment because Lindsay's original offer violated the terms of 43 CFR 3102.7 and 3112.5-2, in that the Resource Service Company allegedly held an undisclosed interest therein and effectively had more than one entry in the drawing for this parcel.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joseph W. Goss
Administrative Judge

fn. 2 (continued)

Congressional committee reports on the 1959 legislation do advert to other violations of the act. Thus both the House and Senate Committee on Interior and Insular Affairs referred to the hesitancy of oil operators to invest in the development of the oil and gas resources of the public domain because of the danger that a prior holder in the chain of title 'may have been in violation of the acreage limitation or other provisions of the act' and that the legislation would protect bona fide purchasers from the consequences 'of a violation of some provision of the leasing act by a predecessor in title.' Sen. Rep. 754 and House Rep. 1062, 86th Cong., 1st sess." (Emphasis supplied.)

